

Message Text

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ACTION OES-07

INFO OCT-01 EUR-12 ISO-00 ACDA-12 CIAE-00 INR-10 IO-13
L-03 NSAE-00 NSC-05 EB-08 NRC-05 SOE-02 DODE-00
SS-15 SP-02 CEQ-01 AID-05 CEA-01 COME-00 H-01
INT-05 OMB-01 PM-05 ICA-11 STR-07 TRSY-02 /134 W
-----120827 082041Z /64

R 082003Z JUN 78
FM AMEMBASSY BRUSSELS
TO SECSTATE WASHDC 7149
INFO DOE WASHDC
DOE GERMANTOWN
ALL EC CAPITALS
AMEMBASSY VIENNA

C O N F I D E N T I A L SECTION 01 OF 03 BRUSSELS 11272

USEEC

VIENNA FOR USIAEA

E.O. 11652: GDS
TAGS: TECH, ENRG, PARM, MNUC, EEC
SUBJECT: PHYSICAL SECURITY AND THE NNPA OF 1978

REF: STATE 107766

1. SUMMARY: THE EC HAS DELAYED OFFICIAL RESPONSE TO
QUESTIONS ON HOW TO HANDLE PHYSICAL SECURITY (REFTEL)
BECAUSE IT IS VIEWED TO BE AN ISSUE TO BE DISCUSSED DURING
RENEGOTIATION OF THE U.S.-EURATOM AGREEMENTS AND THE EC
HAS NOT YET AGREED TO THOSE NEGOTIATIONS. MENNICKEN,
DIRECTOR-GENERAL, EURATOM SUPPLY AGENCY, TOLD US THAT, EVEN
AFTER THERE IS AGREEMENT TO NEGOTIATE, THERE MAY BE DIFFI-
CULTIES IN GETTING PROMPT ACCESSION TO OUR REQUESTS FOR
WRITTEN ASSURANCES SINCE PHYSICAL SECURITY IS NOT NOW
COVERED IN OUR EXISTING AGREEMENTS AND TO ACCEPT OUR
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REQUEST MIGHT BE SEEN TO PREJUDGE THE NEGOTIATIONS.
MENNICKEN SUGGESTED THREE ALTERNATIVE APPROACHES THAT MIGHT
SATISFY OUR NEED FOR ASSURANCE AND WOULD KEEP THE ISSUE
DISCONNECTED FROM THE NEGOTIATIONS. IN ADDITION, HE ASKED
WHETHER A ONE-TIME GOVERNMENTAL COMMITMENT RE PHYSICAL
SECURITY WOULD BE ACCEPTABLE IN LIEU OF THE CASE-BY-CASE
APPROACH IMPLIED IN REFTEL. MENNICKEN'S PERSONAL PREFER-

ENCE IS FOR ALL ACTIONS RELATED TO NUCLEAR SUPPLY TO GO THROUGH THE EURATOM SUPPLY AGENCY (I.E., IN LINE WITH OPTION 3(B) REFTEL). FINALLY, MISSION OFFERS SOME OPTIONS IN THE EVENT THE PHYSICAL SECURITY CRITERION ACTUALLY LEADS TO ANOTHER IMPASSE. END SUMMARY.

2. DOE REP PURPLE MET WITH MESSRS. MENNICKEN, JASPERT AND AMORY ON JUNE 5 TO DISCUSS SUBSTANCE OF REFTEL. THE QUESTIONS IN REFTEL HAD BEEN POSED ORALLY TO AMORY ON APRIL 27. AMORY OPENED THE DISCUSSION BY EXPLAINING THAT THE DELAY IN PROVIDING A RESPONSE WAS DUE TO THE EXISTING IMPASSE REGARDING RENEGOTIATION OF THE U.S.-EURATOM AGREEMENT. HE NOTED THAT THE EC COULD GIVE NO OFFICIAL RESPONSE ON A TOPIC THAT IS NOT NOW COVERED BY THE EXISTING U.S.-EURATOM AGREEMENTS AND THAT WOULD, THEREFORE, HAVE TO BE A SUBJECT FOR NEGOTIATION, SAID NEGOTIATION NOT YET AGREED TO BY THE EC. UNTIL SUCH TIME AS THERE IS A CHANGE IN THE POLITICAL SITUATION (I.E., BOTH PARTIES HAVE AGREED TO NEGOTIATIONS), THEY COULD GIVE US NO OFFICIAL RESPONSE. HE SAID HE THOUGHT THIS MIGHT OCCUR IN THE NEXT FEW WEEKS.

3. MR. MENNICKEN THEN RECOUNTED A RECENT ENCOUNTER BETWEEN DOE AND THE EC WASHINGTON DELEGATION WHEREIN IT WAS REPORTED THAT DOE WAS ASKING THE EC DELEGATION TO INCLUDE A THIRD PARAGRAPH COVERING PHYSICAL SECURITY FOR FIVE OUTSTANDING EXPORT LICENSE APPLICATIONS. THE COMMISSION ON HEARING
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THIS WAS CONFUSED IN VIEW OF THE EARLIER MORE GENERALIZED APPROACH MADE TO THEM BY THE MISSION IN RESPONSE TO REFTEL. MENNICKEN SAID THAT HOYLE, DOS, WAS CONTACTED BY DELEGATION AND THAT HE, HOPEFULLY, WAS STRAIGHTENING THINGS OUT IN WASHINGTON. MENNICKEN SAID HE WOULD NOTIFY THE EC DELEGATION THAT FUTURE DISCUSSIONS ON PHYSICAL SECURITY ARE TO BE HANDLED HERE IN BRUSSELS WITH THE U.S. MISSION.

4. MENNICKEN EMPHASIZED THAT, EVEN AFTER THERE HAS BEEN AN AGREEMENT TO NEGOTIATE, THE EC WILL HAVE DIFFICULTY IN QUICKLY AGREEING TO OFFER THE REQUESTED ASSURANCES REGARDING PHYSICAL SECURITY. NOT, HE SAID, BECAUSE OF ANY SUBSTANTIVE DISAGREEMENT WITH THE PRINCIPLES OF PHYSICAL SECURITY, BUT BECAUSE IT IS ONE OF THE SPECIFIC ISSUES THAT NEEDS TO BE NEGOTIATED AS PART OF THE OVERALL RENEGOTIATION AND IS SOMETHING NOT NOW COVERED BY THE EXISTING AGREEMENTS FOR COOPERATION. TO ACCEPT OUR INSISTENCE ON OBTAINING ASSURANCES ON PHYSICAL SECURITY COULD PREJUDICE THEIR NEGOTIATING POSITION. HE ASKED WHAT WAS OUR LEGAL BASIS FOR ASKING FOR THIS COMMITMENT. WE CITED THE RELEVANT PROVISION OF THE NNPA, THOUGH THE IMPLICATION OF HIS QUESTION WENT TO OUR CURRENT COOPERATION AGREEMENTS RATHER THAN U.S.

LAW.

5. MENNICKEN WONDERED IF THERE WERE NOT OTHER APPROACHES TO SATISFYING THE PHYSICAL SECURITY CRITERIA THAT WOULD KEEP THE ISSUE DISCONNECTED FROM THE RENEGOTIATION PROCESS. FOR EXAMPLE, HE SUGGESTED THE POSSIBILITY THAT THE NRC COULD FIND THAT ALL EC COUNTRIES (EXCEPT LUXEMBOURG, IRELAND, AND DENMARK) HAVE COMMITTED THEMSELVES TO ADEQUATE PHYSICAL SECURITY MEASURES BY VIRTUE OF THEIR DECLARATIONS TO THE IAEA AS MEMBERS OF THE LONDON SUPPLIERS GROUP. HE REALIZES THAT THOSE DECLARATIONS WERE NATIONAL COMMITMENTS AS SUPPLIERS RATHER THAN AS RECEIVERS OF NUCLEAR MATERIAL BUT SUGGESTS THAT IT MIGHT NOT BE TOO FAR-FETCHED TO INTER-

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TO SECSTATE WASHDC 7150
INFO DOE WASHDC
DOE GERMANTOWN
ALL EC CAPITALS
AMEMBASSY VIENNA

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PRET THOSE DECLARATIONS AS COMMITMENTS BY THE GOVERNMENTS TO ALSO APPLY ADEQUATE PHYSICAL SECURITY MEASURES IN THEIR OWN TERRITORY. WHEN ASKED HOW TO COVER THE THREE EC COUNTRIES NOT IN THE LONDON GROUP, HE SUGGESTED THEY COULD PERHAPS BE ASKED TO JOIN IT AND THEN MAKE SIMILAR DECLARATIONS TO THE IAEA.

6. ANOTHER POSSIBILITY THAT WAS MENTIONED WAS TO AMEND THE NNPA OF 1978 SO AS TO PUT THE PHYSICAL SECURITY CRITERIA

UNDER THE SAME EXEMPTION AS IS PROVIDED IN SECTION 304 OF THE ACT FOR PARAS (4) AND (5) OF SECTION 127. IT WAS, HE NOTED, THE CLEAR INTENT OF CONGRESS TO ASSURE NO INTERRUPTION OF SUPPLY DURING THE RENEGOTIATION PERIOD AND THAT IT WAS APPARENTLY AN OVERSIGHT THAT PHYSICAL SECURITY WAS NOT INCLUDED ALONG WITH PARAS (4) AND (5). APPARENTLY THE CONGRESS HAS BEEN ADVISED THAT PHYSICAL SECURITY WAS CONFIDENTIAL

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ALREADY COVERED IN ALL EXISTING AGREEMENTS FOR COOPERATION WHEN, IN FACT, AT LEAST IN THE CASE OF EURATOM, IT WAS NOT.

7. A THIRD POSSIBILITY MENTIONED WAS FOR THE U.S. TO OBTAIN COPIES OF THE NATIONAL LEGISLATION IN EACH MEMBER COUNTRY DEALING WITH PHYSICAL SECURITY AND, BY STUDYING THAT LEGISLATION, ASSURE OURSELVES THAT ADEQUATE MEASURES WILL BE MAINTAINED.

8. MENNICKEN ASKED WHY THE U.S. APPROACH TO THE PROBLEM (AS OUTLINED IN REFTTEL) SEEMED TO BE ON A CASE-BY-CASE BASIS. THAT IS, WE WERE ASKING FOR A COMMITMENT REGARDING PHYSICAL SECURITY FOR EACH EXPORT LICENSE. WHY WOULD NOT A SINGLE, ONE-TIME LETTER OF COMMITMENT FROM EACH COUNTRY TO APPLY ADEQUATE SAFEGUARDS TO ALL U.S.-ORIGIN MATERIAL SUFFICE? AS AN EXAMPLE OF A PRECEDENT FOR THIS, HE PRODUCED A LETTER FROM THE EURATOM SUPPLY AGENCY TO THE U.S. MISSION DATED JULY 17, 1975 THAT CONTAINED SUCH AN OFFICIAL STATEMENT FROM THE FRG. (THE LETTER WAS FORWARDED TO THE ATOMIC ENERGY COMMISSION BY THE MISSION). (COMMENT: WE NOTE THAT THE ONE-TIME GOVERNMENTAL APPROACH IS INCLUDED IN NRC'S PART 110, EXPORT AND IMPORT OF NUCLEAR MATERIAL AND EQUIPMENT, PUBLISHED IN THE FEDERAL REGISTER ON MAY 19, 1978.)

9. ON THE QUESTION OF DEALING ONLY WITH EURATOM OR BILATERALLY WITH EACH MEMBER COUNTRY, MENNICKEN MADE TWO POINTS. FIRST, HE POINTED OUT THAT THE BILATERAL APPROACH WOULD BE SUCCESSFUL ONLY IF ALL NINE MEMBER COUNTRIES AGREE. IF ONE OR MORE OF THEM REFUSE TO GIVE US THE NECESSARY COMMITMENT, AND IF THIS REFUSAL WOULD CAUSE AN EMBARGO ON U.S. EXPORTS TO THAT COUNTRY, THEN THE EC WOULD HAVE TO INTERVENE TO DISAPPROVE ALL EURATOM TRANSACTIONS WITH THE U.S. SINCE THE RESULTING SITUATION WOULD RUN COUNTER TO THE CONFIDENTIAL

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EURATOM TREATY PRINCIPLES OF EQUAL ACCESS AND FREE MOVEMENT OF NUCLEAR MATERIALS. SECONDLY, HE FELT THAT IT WOULD BE

BETTER FOR ALL ACTIONS RELATED TO NUCLEAR SUPPLY TO GO THROUGH THE EURATOM SUPPLY AGENCY. FURTHER, HE SAID THAT BILATERAL APPROACHES AT THIS TIME WOULD BE HARMFUL TO THE VERY DIFFICULT NEGOTIATIONS NOW UNDERWAY WITHIN THE COMMUNITY ON THE QUESTION OF THE EC'S COMPETENCE IN THE FIELD OF PHYSICAL SECURITY. (COMMENT: MENNICKEN'S COMMENTS AS REPORTED IN THIS PARAGRAPH ARE HIS PERSONAL VIEWS, AND DO NOT CONSTITUTE AN OFFICIAL EC REPOSE TO OUR QUERY.)

10. WE ARE NOT SURE AT THIS TIME HOW MUCH OF THE ABOVE IS SIMPLY A BUREAUCRATIC OR LEGALISTIC ATTITUDE OF THE EURATOM SUPPLY AGENCY OR WHETHER IT ACTUALLY REFLECTS INPUT FROM MEMBER COUNTRIES. IT IS DIFFICULT TO IMAGINE THAT, ONCE THERE IS AGREEMENT TO NEGOTIATE, EITHER THE COMMISSION OR THE MEMBER STATES WOULD PERMIT THE ISSUE OF PHYSICAL SECURITY TO INTERVENE AS YET ANOTHER IMPASSE THAT RESULTS IN A FURTHER EMBARGO. NONETHELESS, WE HAVE BEEN ALERTED TO A POTENTIAL PROBLEM AND WOULD BE WELL-ADVISED TO CONSIDER ALTERNATIVES IN THE EVENT THE EC OR SOME OF THE MEMBER COUNTRIES BALK AT GIVING US THE ASSURANCES WE SEEK ON PHYSICAL SECURITY. WE HAVE GIVEN SOME THOUGHT TO THE POTENTIAL PROBLEM, AND OFFER THE FOLLOWING OPTIONS:

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INFO DOE WASHDC
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AMEMBASSY VIENNA

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A. MENNICKEN'S PROPOSALS DISCUSSED IN PARAGRAPHS 4, 5, AND 6.

B. THE NUCLEAR AGREEMENT BETWEEN CANADA AND THE EUROPEAN COMMUNITY INCLUDES NOTES FROM EACH EC MEMBER COUNTRY ASSURING THAT THE PRESCRIBED LEVELS OF PHYSICAL PROTECTION WILL BE APPLIED. ALTHOUGH THESE ASSURANCES APPLY ONLY TO CANADIAN-ORIGIN MATERIAL, WE WONDER IF THEY COULD NOT BE USED BY REFERENCE AS EVIDENCE OF THE ADEQUACY OF PHYSICAL SECURITY MEASURES WITHIN THE EC MEMBER COUNTRIES. PERHAPS THIS, COUPLED WITH THE LONDON SUPPLIERS GROUP DECLARATIONS AND A REVIEW OF MEMBER COUNTRY NATIONAL LEGISLATION, WOULD BE SUFFICIENT EVIDENCE TO SUPPORT A POSITIVE FINDING BY THE NRC WITH RESPECT TO THE PHYSICAL SECURITY CRITERIA IN THE NNPA.

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C. ONE PROBLEM WE SEE WITH PARAGRAPH (B) ABOVE IS THAT THE NEW NRC PART 110 SPECIFICALLY REQUIRES WRITTEN ASSURANCES FROM RECIPIENT COUNTRIES. HOWEVER, SINCE SUCH WRITTEN ASSURANCES ARE NOT, AS WE UNDERSTAND IT, A SPECIFIC REQUIREMENT OF THE NNPA, THE OPTION OF TEMPORARILY AMENDING THOSE REGULATIONS INsofar AS THEY PERTAIN TO THE EC SHOULD BE CONSIDERED.

D. ONCE THERE EXISTS A SATISFACTORY AGREEMENT TO NEGOTIATE, WE COULD ASK THE EC FOR SUITABLE LETTERS OF ASSURANCE SUCH AS IN THE EXAMPLE CITED BY MENNICKEN IN PARA (8) ABOVE. IF THEY REFUSE, WE COULD SUGGEST DIRECT APPROACHES TO THE MEMBER COUNTRIES, USING THE ARGUMENT THAT WE ARE ASKING FOR NO MORE THAN WHAT THEY JUST FURNISHED TO CANADA. IF THAT IS UNSUCCESSFUL, ONE OR MORE OF THE OTHER ALTERNATIVES DISCUSSED ABOVE COULD BE PURSUED. HINTON

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Message Attributes

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